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CITY OF OAKLAND, HOWARD JORDAN

and SEAN WHENT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DERWIN LONGMIRE,

Plaintiff,

vs.

CITY OF OAKLAND, HOWARD

JORDAN, SEAN WHENT, and DOES 1-

50, inclusive,

Defendant.

) Case No. C 10-01465 JSW

)

) (42 U.S.C. §§ 1981 and 1983)

)

) **DECLARATION OF JOHN PORBANIC IN**

) **SUPPORT OF DEFENDANTS' MOTION**

) **FOR SUMMARY JUDGMENT OR, IN**

) **THE ALTERNATIVE, PARTIAL**

) **SUMMARY JUDGMENT**

)

) **Date: December 9, 2011**

) **Time: 9:00 a.m.**

) **Dept: Courtroom 11, 19th Floor**

) **Judge: Hon. Jeffrey S. White**

)

) **Date Action Filed: April 7, 2010**

) **Trial Date: February 27, 2012**

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1 I, John Porbanic, declare as follows:

2 1. I am a Special Agent Supervisor with the California Department of Justice. In late
3 2008 and early 2009, I conducted an administrative investigation of potential police officer
4 misconduct for the Oakland Police Department involving Derwin Longmire, his supervisor
5 Lieutenant Ersie Joyner and his manager Deputy Chief Jeffrey Loman. I have personal knowledge
6 of the following facts and am competent to testify about them.

7 2. I have worked as an investigator for the California Department of Justice since 1999.
8 The DOJ is periodically called upon by local agencies to conduct law enforcement related
9 investigations where there are concerns of conflict of interest at the local level. These investigations
10 can be criminal or administrative in nature. An administrative investigation focuses on violation of
11 professional standards for police officers as opposed to violations of criminal law.

12 3. In October 2008, former Oakland Mayor Ron Dellums requested that the DOJ
13 conduct a parallel, concurrent investigation involving the conduct of Oakland Police Department
14 ("OPD") personnel who were responsible for investigating a high-profile murder: the killing of
15 journalist Chauncey Bailey. Mayor Dellums' request to the DOJ followed intense scrutiny in the
16 media of the Oakland Police Department's alleged missteps in the investigation of Bailey's murder
17 and specifically the conduct of the lead homicide detective, Derwin Longmire, and Longmire's
18 alleged relationship with murder suspect Yusef Bey IV. I was assigned by DOJ Special Agent in
19 Charge, Jeff Wall, to be the lead DOJ investigator into the allegations that Longmire, Joyner and
20 Loman violated the OPD's Manual of Rules. Initially, however, we determined that DOJ's role
21 would be limited to monitoring OPD's progress on their administrative investigation, reviewing the
22 completed work product, and recommending (or conducting, if we felt it necessary) any additional
23 investigation that was needed in order to ensure that the investigation was complete and impartial.
24 However, while our agency was not taking on responsibility at that time as the "lead" agency
25 investigating the allegations, I was also empowered to conduct any independent investigation I felt
26 necessary based on my review of the existing investigation. At all times, DOJ operated entirely
27 independently and received no direction or instructions from OPD regarding the manner in which we
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1 were to conduct the investigation or the witnesses to be interviewed. I had no prior involvement
2 investigating OPD and I had no prior experiences or knowledge of Derwin Longmire.

3 4. My first step was to become familiar with the investigation that had been conducted
4 by OPD's Internal Affairs Division up to that time. On November 12, 2008, I (and others from the
5 DOJ team) met with OPD Sergeant Robert Chan from Internal Affairs. Sergeant Chan provided me
6 with 19 CD's containing voluminous amounts of evidence and information collected by the Internal
7 Affairs Division and the IAD memoranda prepared to date pertaining to their own investigation. I
8 spent days reviewing and assimilating this information. Although we were not attempting at that
9 time to actively conduct the investigation for OPD as the lead agency, I was nevertheless empowered
10 to do whatever was necessary in order to get completely up to speed on the matter, including
11 contacting and interviewing any individuals or entities I believed necessary.

12 5. On December 18, 2008, I (and others on the DOJ team) met with representatives from
13 the Alameda County District Attorney's Office prosecuting the Bailey murder, including District
14 Attorney Tom Orloff. Deputy District Attorney Chris Lameiro and their investigators Toni Sal and
15 Kathy Boyavich. Since a suspect had been arrested and a homicide prosecution was pending, we felt
16 that a meeting with the D.A. was necessary since the fact of the now-public OPD investigation
17 focused on alleged misdeeds by the lead detective handling the evidence that the D.A. would be
18 presenting at trial. The purpose of this meeting with the DA was to clarify our role, open a line of
19 communication between the D.A. investigators and myself, and attempt to minimize any interference
20 with the criminal prosecution by any investigation done by DOJ. While we wanted to be able to
21 communicate with the District Attorney's Office if absolutely necessary, we also felt it necessary to
22 keep a very clear separation between the criminal and IA investigations and to minimize contact
23 with the DA's office. This is because peace officer internal affairs investigations, and compelled
24 statements by public employees, are protected by law, including the *Lybarger* rules and the *Pitchess*
25 protections afforded peace officer personnel records by statute and case law. The District Attorney
26 investigators informed us Longmire had a history of lack of thoroughness and follow-up with his
27 cases and they were doing a considerable amount of work on this case. It was my impression that
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1 they were attempting to largely re-create the investigation so as to minimize Longmire's
2 involvement at trial. They did not know yet if they would pursue any type of criminal charges
3 against Longmire, but whether or not to pursue such charges is within the province of the local
4 prosecutor and DOJ would not step in unless it was requested to do so or determined that it was
5 necessary to do so.

6 6. On December 23, 2008, I (and others on the DOJ team), met with OPD Chief Tucker,
7 OPD Captain Paulson, and City Attorney Rocio Fierro to determine the progress of their
8 investigation. They informed us their independent consultant Wendell (Pete) France would be
9 completing the internal affairs investigation and would be done in approximately two weeks. Based
10 on that timetable, we believed that DOJ would be able to effectively review France's work and
11 determine if any additional investigation was needed. OPD informed us that it believed the time
12 period to comply with the Public Safety Officer's Procedural Bill of Rights Act (Cal. Gov't Code §
13 3300) ("POBR") was April 17, 2009.

14 7. Thereafter, I attempted to arrange a meeting with France to discuss his progress on
15 his investigation. Finally, on January 28, 2009, at 1000 hours, I was able to meet with France. He
16 stated he had run into problems completing the investigation and has not been able to complete the
17 interviews he wanted to. He informed me he had not made any real progress in the investigation. I
18 informed my chain of command. At approximately 1600 hours on that same day, due to France's
19 lack of progress and the impending POBR deadline, I was directed to take over the investigation and
20 conduct an independent investigation. We offered France the opportunity to participate with us in
21 the investigation, which he never did. We were now faced with a very short timeframe to complete
22 the investigation, document it, have it reviewed and approved. I immediately contacted OPD to
23 arrange the scheduling of their personnel for interviews and began preparing for the interviews. I
24 independently decided which individuals to interview based upon my review of all case related
25 information and selected individuals I believed had knowledge of all three subject's actions related
26 to the allegations including peers in the homicide unit, supervisors and managers. I conducted
27 interviews for approximately two weeks between February 16, 2009, and February 26, 2009. I
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1 reviewed all of the interview transcripts and case related information and completed three
2 comprehensive reports as to my findings (one for each subject: Loman, Joyner, and Longmire). The
3 reports were reviewed by my chain of command for completeness and accuracy and I hand carried
4 them to Oakland City Attorney Rocio Fierro on April 2, 2009. I determined that it appeared that
5 Longmire had violated OPD's Manual of Rules, but did not determine that any violation had been
6 committed by Joyner or Loman.

7 8. One person that I interviewed was Assistant Chief Howard Jordan, and I interviewed
8 him because he was in Longmire's chain of command and thus presumably had knowledge of the
9 Bailey investigation. The only time I spoke with Chief Jordan was when I interviewed him. When I
10 prepared my list of witnesses, I was unaware of the race of most individuals. As it turns out, I
11 interviewed a racially diverse group of witnesses including five African Americans, one Hispanic,
12 one Caucasian, and one mixed-race individual. I also relied on some interviews conducted by
13 Sergeant Chan.

14 9. I was never given any instruction by anyone at OPD or my superiors at DOJ as to the
15 expected or desired outcome of the investigation, nor did I have any predetermined outcome in
16 mind. The findings were my own, using my professional training and experience, in light of the
17 voluminous evidence I gathered. I applied a preponderance of the evidence standard. With respect
18 to my findings involving Longmire, I believed that the evidence demonstrated a violation of two of
19 the allegations: Performance of Duty and Compromising Criminal Cases. I did not believe that the
20 evidence demonstrated a violation of the following allegations: Obedience to Laws; Assisting
21 Criminals; Subversive Organizations.

22 As more fully detailed in my lengthy investigative report, as to the Performance of Duty
23 allegation, I found that Longmire failed to perform the duties of a competent homicide investigator
24 on the Bailey investigation in several respects including, but not limited to:

- 25 • Longmire failed to include in his written homicide report vehicle tracking evidence that
26 Yusef Bey IV's vehicle was outside Bailey's house the night before the murder and near the
27 scene of the murder shortly after it occurred. Longmire further refused Officer Huesman's
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offer to prepare a supplemental report with this information.

- Longmire failed to include in his written homicide report evidence of a videotaped statement obtained of Yusef Bey IV at the San Leandro Police Department on August 6, 2007, four days after the murder, during which Bey IV described the location of the murder weapon the night after the killing, where Bailey was shot on his body, how Bailey reacted to the gunshots, and Bey IV's attribution to Longmire of the fact that the murder was not pinned on Bey IV.
- Longmire failed to issue a warrant for cell-site records on Yusef Bey IV's cell phone to determine if, when, and where he communicated with murder suspects Devaughndre Broussard and/or Antoine Mackey.
- Longmire failed to diligently execute a search warrant for a cell phone belonging to Yusef Bey IV by simply asking Bey IV's wife if she knew where it was.
- Longmire permitted Yusef Bey IV and Devaughndre Broussard to speak privately to each other while in police custody and did not record the conversation. Shortly after this conversation, Broussard confessed to the murder.
- Longmire failed to document every communication he had with Yusef Bey IV while Bey IV was incarcerated on other charges, despite a clear directive from his supervisor Joyner to do so.

As more fully detailed in my lengthy investigative report, on Compromising a Criminal Case, I found that Longmire interfered with the proper administration of criminal justice on the Bailey case in several respects including, but not limited to:

- Longmire failed to remove himself as the lead homicide investigator in the Bailey murder despite his relationship with Yusef Bey IV.
- Longmire took (or failed to take) investigative steps to avoid implicating Bey IV, described above.
- Longmire permitted Bey IV to post an article on the www.freethebakerybrothers.org website describing their relationship or friendship, and including Longmire's photo, while criminal

1 charges were pending.

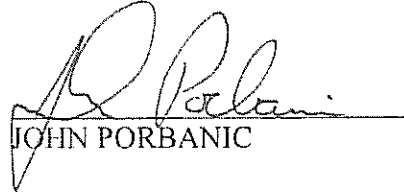
2 Longmire intervened in a torture/kidnapping investigation involving the Bakery and tried to
3 have electronics seized during the Bakery raid in that case returned to Yusef Bey IV's wife.

4 10. I did not conclude that Longmire was a "Black Muslim" or a member of "Your Black
5 Muslim Bakery" during my investigation, nor did I consider his religious beliefs in coming to the
6 conclusions outlined above. For the reasons outlined above, I concluded that Longmire had a
7 relationship with Yusef Bey IV that interfered with his objectivity as a homicide investigator on the
8 Bailey case. I did not consider Longmire's race in making these determinations. In fact, I
9 determined that the evidence did not support a finding of a Manual of Rules violation for Joyner and
10 Loman, both African-Americans.

11 11. I understand that Longmire has criticized my investigation for not discussing with the
12 prosecutors, during my investigation (and thus before the criminal trial of suspect Broussard),
13 whether or not they in fact happened to be aware of evidence that was excluded from the
14 investigative reports by Longmire. I did not attempt any such determinations, for two reasons.
15 First, in my view, whether or not any given prosecutor may or may not happen to be aware of
16 information from another matter, it does not excuse a failure of an investigator to document
17 important information in investigative reports: The identity of assigned investigators or prosecutors
18 may change, but information will never be lost if, instead of being left to oral history, it is
19 documented in the file and available to any subsequent investigator or prosecutor. Thus, in my view,
20 it simply did not matter what the prosecutor thought about it: Longmire should have documented the
21 information involving Bey IV, and his failure to do so, particularly in light of his relationship with
22 Bey IV, rose to the level of an OPD MOR violation, in my view. Second, it puts a prosecutor in an
23 untenable position to ask the prosecutor his or her opinion about whether or not the lead police
24 investigator compromised a criminal case which the prosecutor is presently attempting to prosecute,
25 prior to a jury trial. While there may be situations where this is necessary, this was not one of them,
26 in my view.

1 I declare under penalty of perjury under the laws of the State of California and the United
2 States of America that the foregoing is true and correct.

3 Executed this 11th day of August 2011, at Sacramento, California.

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6 JOHN PORBANIC
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